



# The Compliance Connection

Regulatory News for Virginia Mortgage and Consumer Finance Companies  
State Corporation Commission -- Bureau of Financial Institutions

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance, industrial loan and non-profit debt-counseling agency licensees and other interested parties. It is the licensee's responsibility as a Virginia mortgage licensee to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, Virginia 23218-0640 or via e-mail at: [nwalker@scc.state.va.us](mailto:nwalker@scc.state.va.us).

Special thanks to Susan Hancock, Jon Orne, Jane Owen and Karen Sullivan for their contributions to this issue!

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## **Clarification of Prepayment Penalty Limits**

The Commissioner recently issued Administrative Letter 1610 to provide information about the Bureau's ability to enforce Virginia's legal limitations on prepayment penalties. Below is the text from this Administrative Letter. (It is also available on the Bureau's Web site at [http://www.state.va.us/scc/division/banking/news/admin\\_lets.pdf](http://www.state.va.us/scc/division/banking/news/admin_lets.pdf) ) If you would like to read the previous articles relating to the injunction filed against the Bureau, review the April 1999, October 1999 and Winter 2001 issues of The Compliance Connection, which are also available on the Bureau's Web site (<http://www.state.va.us/scc/division/banking/complnc.htm>).

### Administrative Letter BFI-AL-1610

#### Prepayment Penalties in Alternative Mortgage Transactions

Prior to December 18, 2003, the Bureau was subject to an injunction entered by the United States District Court for the Eastern District of Virginia, Richmond Division. That injunction barred the Bureau from enforcing Virginia law limits on prepayment penalties in "alternative mortgage transactions" (AMTs) entered into by non-depository housing creditors. On December 18, 2003, the parties to the case in which the injunction was issued appeared before the Court to be heard on certain motions.

After argument the Court ruled that the Bureau was not barred from enforcing Virginia law prepayment penalty limits with respect to AMTs entered into on or after July 1, 2003, the effective date of revised regulations of the Office of Thrift Supervision. Therefore, the Bureau will resume enforcement of those laws in connection with AMTs closed on or after July 1, 2003 by mortgage lenders licensed under the Virginia Mortgage Lender and Broker Act.

Issued by the Commissioner of Financial Institutions on February 18, 2004

Reference: §§6.1-330.83 and 6.1-330.85 of the Code of Virginia

## **“Refer a Friend” Program Leads to HUD Settlement**

The Department of Housing and Urban Development initiated an investigation of a branch manager of a mortgage company for his use of a “Refer a Friend” program. Under this program, former clients who sent referrals to the branch were entered into a raffle and given a chance to win tickets to sporting events, theatre productions and other prizes. One winner per month was announced in a newsletter distributed by the branch manager.

According to the February 29, 2004 Settlement Agreement posted on HUD’s Web site, HUD believes the branch manager’s “Refer a Friend” program violated Section 8 of RESPA in two ways: 1) the branch manager gave the monthly raffle winners things of value for referring business and 2) the branch manager gave non-winners the chance of winning through the opportunity to participate in a contest that awarded things of value which, in itself, is a thing of value. The branch manager also sold materials that instructed loan officers to pay referrals fees for the referral of settlement service business.



Section 8a of the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USA §2607(a) states that “[n]o person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.”

The branch manager cooperated with HUD and complied with requests made by HUD during the investigation. The parties agree that entering into the Settlement Agreement does not constitute an admission of liability or wrongdoing on the branch manager’s part. The branch manager agreed to abide by the requirements of RESPA, its implementing regulations, and other applicable laws; pay a monetary settlement; send a notice to each person who purchased his promotional materials; and agreed that if he fails to comply with any of the terms of the Settlement he will pay damages of \$20,000 for violating the terms of the Settlement Agreement.

To view the entire Settlement Agreement, go to HUD’s Web site: <http://www.hud.gov/offices/hsg/sfh/res/resetagr.cfm> and look for the settlement titled Integrity Home Funding, LLC, dated February 29, 2004.

## **Mortgage Licensee Orientation:**

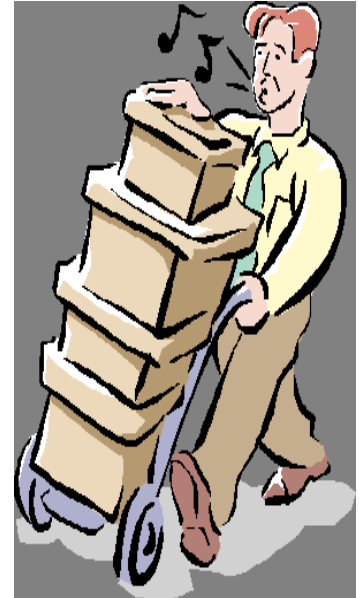
Friday, May 14, 2004 is the date of the next orientation for new mortgage licensees. Companies that are licensed between January 1, 2004 and March 31, 2004 will receive information about the session. Orientation begins at 9:30 a.m. at our office and concludes around 3:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties. Call Carol Foster at (804) 371-9701 to register!



## Opening a New Office? Relocating?

Did you know that approval from the Commission is required **BEFORE** you open a new office or relocate an existing one? Section 6.1-416 of the Code of Virginia requires licensees to apply for and obtain approval prior to relocating or opening an additional office. Opening a new office or relocating an office without the required approval could result in a fine as shown on page 5 of this newsletter. In addition, the statute requires licensees to notify (in writing) the Commissioner, within 10 days, of the actual date of the relocation or opening.

Once granted, the initial approval is good for one year. In most cases, openings and relocations occur soon after the approval is granted, but many times the relocation/opening is delayed or canceled altogether. Until a written confirmation from the licensee is received, the Bureau considers branches “authorized/unopened.” Consumers and lenders/investors regularly call the Bureau to determine if offices/branches are licensed. **If the relocation/opening confirmation letter has not been sent to the Commissioner, we will inform the callers that the office is authorized, but unopened. Failure to properly notify the Commissioner of relocations/openings could result in consumers going elsewhere for a loan.**



## HUD Withdraws RESPA Rule for Further Review

March 22, 2004: HUD's proposal to make homebuying simpler, more transparent and more affordable continues to be a priority. Due to the importance of HUD's efforts to reform the regulatory provisions of the Real Estate Settlement Procedures Act (RESPA) and the extensive concerns from Members of Congress, consumer groups and the business community, Acting Secretary Jackson has withdrawn the rule from the Office of Management and Budget (OMB). (From "Newsroom" at [www.hud.gov](http://www.hud.gov))

## Surety Bond Claims Filed

MB – 559 American Mortgage Bankers -- \$6,639 claim paid 1/7/03 – license revoked 7/9/02

MB – 1301 Mortgage Finders of Virginia, Inc. d/b/a Excel Mortgage Bankers -- \$2,210.50 claim paid 12/23/03 – license revoked 4/18/03

Since mid-1998, bond claims totaling \$97,287.90 have been filed by the Bureau against mortgage licensees and paid by their surety companies (not including claims paid to third parties).



## Acquisition of Control of Mortgage Licensee

Section 6.1-416.1 of the Code of Virginia prohibits a person from acquiring, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other entity licensed as a mortgage lender and/or broker unless the person:

- files an application with the Commission at least 60 days prior to the proposed acquisition date;
- delivers other information concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals, and members; and any proposed new officers or directors of the entity being acquired;
- pays the prescribed application fee.

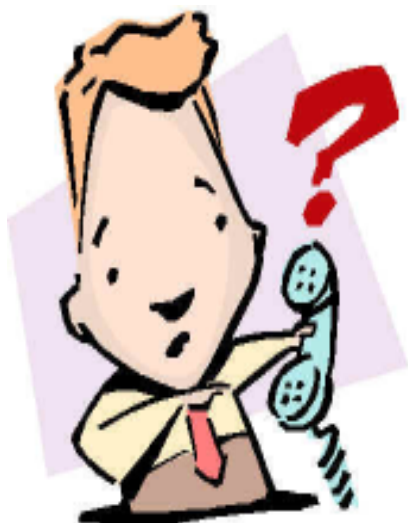


In order to approve an acquisition application, the Commission must find that the applicant, its members, directors, senior officers and principals, and any proposed new officers/directors of the entity being acquired have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently, fairly and in accordance with the law.

The statute requires that acquisition applications be acted upon within 60 days of receipt of a completed application.

## Amendments Made to Administrative Letter 0702

Administrative Letter 0702, titled "Charges on Subordinate Mortgage Loans by Certain Lenders" has been amended, effective January 20, 2004. Please check the Bureau's Web site at [http://www.state.va.us/scc/division/banking/news/admin\\_lets.pdf](http://www.state.va.us/scc/division/banking/news/admin_lets.pdf) to view the text of the letter.



## IMPORTANT COMMISSION TELEPHONE NUMBERS

Consumer Finance and Mortgage Examinations ....(804) 371-9701  
Licensing (applications, name changes, relocations).....(804) 371-9690  
Consumer Complaints.....(804) 371-9705  
Banks and Savings Institutions.....(804) 371-9704  
Corporate Information – Clerk's Office.....(804) 371-9733  
FAX Number for the Bureau of Financial Institutions.....(804) 371-9416  
TDD (804) 371-9206

## **License Update**

The following is a list of companies that have surrendered their licenses, had their licenses revoked, had an application denied, or been fined by the Commission since November 15, 2003. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of February 15, 2004. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at <http://www.state.va.us/scc/division/banking/vamortgagelist.htm>

### **Mortgage License Surrenders**

MB – 1555 Foster's Corporation d/b/a Classic Mortgage – 11/20/03  
MB – 2099 Gassan Kassira d/b/a Kassira Financial – 11/20/03  
MB – 1391 Nations Mortgage Company, Inc. – 11/24/03  
MB – 2042 First Southern Residential Mortgage, Inc. — 12/09/03  
MB – 1366 Mortgage Resource Group, Inc. – 12/15/03  
MB – 1734 GetSmart.com, Inc. – 12/17/03  
MLB – 805 Instafl.com (Inc.), (used in VA by Instafl.com) – 12/19/03  
ML – 494 Ebanc Funding, Your Mortgage Lender, LLC d/b/a Lifetime Capital Guarantee -- 12/30/03  
MB – 1056 Financial Solutions, LLC – 12/31/03  
MB – 1979 United American Lending, L.P. – 12/31/03  
ML – 467 AmerUs Home Lending, Inc. – 1/1/04  
MLB – 289 Alliance Mortgage Company – 1/2/04  
MB – 1884 MortgagePlus, LLC – 1/14/04  
MB – 1699 Yates Mobile Services Corp. d/b/a Yates Home Sales -- 1/15/04  
MB – 1235 Loyalty Mortgage Corporation – 1/21/04  
MB – 1594 Virginia State Mortgage, Inc. – 1/27/04  
MB – 1920 ATS, LLC – 1/31/04  
MB – 1294 Integrity Home Mortgage, LLC – 1/31/04  
ML – 238 Harborside Financial Network, Inc. – 2/2/04  
MB – 1850 Millennium Lending Group, Inc. – 2/9/04  
MB – 2020 Diversified Mortgage Capital, Inc. – 2/14/04  
MB – 171 Jeffrey Dale Chandler – 2/23/04  
MB – 2200 MJD Diversified Financial Services, Inc. d/b/a Integrity First Mortgage – 3/2/04



### **Mortgage Licenses Revoked**

MB – 1868 OceanTrust Mortgage Corp. – 12/19/04 – for failure to continuously maintain surety bond as required by §6.1-413 of the Code of Virginia

### **Mortgage Penalties Paid:**

MB – 2296 Evergreen Financial Services, Inc. d/b/a Evergreen Mortgage Company – paid \$2,000 on 1/8/04 for failure to obtain Commission approval prior to operating a mortgage broker business in violation of §6.1-410 of the Code of Virginia  
Jim C. Hodge – paid \$15,000 on 1/8/04 for his failure to obtain Commission approval prior to acquiring more than 25% of the stock of Allied Home Mortgage Capital Corporation (MLB – 592), in violation of §6.1-416.1 of the Code of Virginia  
MLB – 841 Prosperity Mortgage Company – paid \$1,000 for failure to obtain Commission approval prior to relocating an office, in violation of §6.1-416B of the Code of Virginia  
MB – 1466 Northstar Mortgage Corp. – paid \$500 for failure to obtain Commission approval prior to relocating an office, in violation of §6.1-416B of the Code of Virginia  
MLB – 691 American Residential Funding, Inc. – paid \$1,000 for failure to obtain Commission approval prior to relocating an office, in violation of §6.1-416B of the Code of Virginia  
David J. Oliverio – paid \$1,000 on 1/8/04 for his failure to obtain Commission approval prior to acquiring 50% of the stock of 1<sup>st</sup> American Mortgage, Inc. d/b/a CU Mortgage Group (MLB – 657), in violation of §6.1-416.1 of the Code of Virginia

## **Mortgage Annual Report Reminder**

A considerable number of licensed mortgage lenders and/or brokers have not met the March 1 statutory deadline for filing their mortgage annual reports with the Bureau of Financial Institutions. Reminder letters were mailed to delinquent licensees in early March. As of March 24, 2004, 1,316 licensees filed the reports and 87 were still delinquent. The mortgage annual report form for 2003 [(CCB-8805 (Rev. 11/2003))] was mailed to all licensees last December and was also placed on the Bureau's Web site at <http://www.state.va.us/scc/division/banking/vareport.htm>

The annual reports are used for calculation of annual fees, regulatory and financial review of operations, and for completion of the Bureau's Annual Report. It is important, therefore, that the reports be filed on time. Section 6.1-418 of the Code of Virginia requires licensees to file the mortgage report each calendar year on or before March 1 and does not provide for an extension of time. Licensees who have not met the statutory deadline stand to face penalties commensurate with the number of days the report is delinquent, denial of applications for additional offices or relocation of existing ones and/or revocation of their licenses.

Questions concerning the annual report can be directed to the Corporate Structure and Research section of the Bureau at (804) 371-9690.



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**IMPORTANT REGULATORY INFORMATION ENCLOSED!**